

1 5770-B

RECORDATION NO. _____ DATE 1988

ITEL

AUG 5 1988 3 25 PM

August 1, 1988

INTERSTATE COMMERCE COMMISSION

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

Istel Rail Corporation

Hon. Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Amendment No. 3 to Schedule 1 of the Lease Agreement dated as of June 6, 1980, between The Ferdinand and Huntingburg Railroad Company, as assignee of the Louisville, New Albany and Corydon Railroad Company, and Modesto Empire and Traction Company

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under Amendment No. 1 to Lease Agreement dated as of June 6, 1980, between The Ferdinand and Huntingburg Railroad Company and Modesto Empire and Traction Company, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

The Ferdinand and Huntingburg Railroad Company (Lessor)
55 Francisco Street
San Francisco, California 94133

Modesto Empire and Traction Company (Lessee)
530 Eleventh Street
Modesto, California 95353

This Amendment covers one hundred sixty-eight (168) RBL boxcars bearing reporting marks LNAC 5225-5638 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker
Patricia Schumacker
Legal Department

1 5770-B
RECORDATION NO. _____ FROM 1988

AUG 5 1988-3 25 PM LOT NO. 1474-00

AMENDMENT NO. 3 INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 3 (the "Amendment") to Schedule 1 dated June 6, 1980, as amended, ("Schedule 1") to Lease Agreement dated as of June 6, 1980, as amended, (the "Lease") between FERDINAND AND HUNTINGBURG RAILROAD COMPANY, as assignee of Louisville, New Albany and Corydon Railroad Company ("Lessor"), and MODESTO EMPIRE AND TRACTION COMPANY ("Lessee") is made as of this 8th day of July, 1988, by and between Lessor and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to Schedule 1 to the Lease pursuant to which eighty-nine (89) used RBL Boxcars bearing the reporting marks LNAC 5225-5242, 5244-5250, 5257-5259, 5261, 5262, 5275-5289, 5300-5307, 5309-5344 were leased by Lessor to Lessee.
- B. Lessor and Lessee desire to add to Schedule 1, forty-one(41) RBL Boxcars bearing reporting marks LNAC 5500-5522, 5524-5527, 5529-5542 and thirty-eight (38) RBL Boxcars bearing reporting marks LNAC 5600-5634, 5636-5638, all of which Cars were previously subject to two (2) Lease Agreements dated June 6, 1980, which expired on February 29, 1988.
- C. The parties desire to amend the terms of Schedule 1.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to amend Schedule 1 as follows:

- 1. All terms defined in Schedule 1 and the Lease shall have the meanings defined in those documents therein when used in this Amendment.
- 2. The term of the Lease with respect to each Car bearing reporting marks from within the series LNAC 5500-5638 shall commence on March 1, 1988 and shall continue as to all the Cars described in Schedule 1, as amended herein, through and including March 1, 1991.
- 3. During the term of the Lease, Lessor may, at its option and expense, and upon notification from Lessor to Lessee, remark the Cars to the reporting marks FRDN.
- 4. The Rent Section is hereby deleted in its entirety and replaced by the following:

"RENT

A. Definitions

- (i) 'Revenues' is defined as the total revenues earned and due from other railroad companies for the use of handling of the Cars, including but not limited to, per diem and mileage,

whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.

(ii) The 'Utilization Rate' of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Cars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars were on lease to Lessee, commencing from the Initial Loading.

B. Lessor shall retain a sum equal
the total Revenues,

Lessee with a destination off Lessee's lines.

C. The parties hereby mutually agree to use their best efforts to maintain the bilateral agreements with The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Transportation Company and Union Pacific Railroad Company during the term of this Lease.

D. If, with respect to any calendar quarter, Revenues are less than

revenues which the Cars would have earned in the aggregate at a Utilization Rate of _____ Car travelling _____ per day during such calendar quarter) Lessor may, at any time, at its option and upon not less than thirty (30) days prior written notice to Lessee, terminate this Lease as to such Cars as Lessor shall determine."

5. A new Section is hereby added to Schedule 1 as follows:

"ASSIGNMENT POOL

Lessee shall, upon receiving instructions from Lessor, place the Cars into an assignment pool on Lessee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10."

6. Except as expressly modified by this Amendment, all terms and provisions of Schedule 1 shall remain in full force and effect.

7. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

FERDINAND AND HUNTINGBURG
RAILROAD COMPANY

By: WJ. H. H. H. H. H.

Title: PRESIDENT

Date: 7/8/88

MODESTO EMPIRE AND TRACTION COMPANY

By: James L. Baird

Title: President

Date: June 30, 1988

STATE OF CALIFORNIA)
) ss:
 COUNTY OF SAN FRANCISCO)

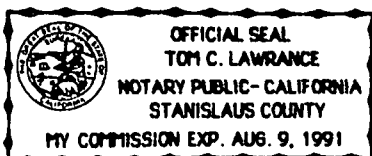
On this 8th day of July, 1988, before me personally appeared William J. Herndon, to me personally known, who being by me duly sworn says that such person is President of Ferdinand and Huntingburg Railroad Company, that the foregoing Amendment No. 3 to Schedule 1 signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
 Notary Public



STATE OF CALIFORNIA)
) ss:
 COUNTY OF STANISLAUS)

On this thirtieth day of June, 1988, before me personally appeared James L. Beard, to me personally known, who being by me duly sworn says that such person is President of Modesto Empire and Traction Company, that the foregoing Amendment No. 3 to Schedule 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Tom C. Lawrance
 Notary Public